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In re Application of : DECISION ON
ROBERTSSON et al :
Application No.: 10/501,271 :
PCT No.: PCT/GB03/00052 :
Int. Filing Date: 09 January 2003 : PETITION UNDER
Priority Date: 11 January 2002 :
Attorney's Docket No.: WGEC0037 :
For: Method of and Apparatus for Processing :
Seismic Data : 37 CFR 1.181

This Decision is in response to applicants' "PETITION TO WITHDRAW A HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.181," filed on 01 May 2006, requesting the acceptance of the executed declaration form as timely filed since the Notification of Defective Response was not received.

BACKGROUND

On 09 January 2003, applicants filed international application PCT/GB03/00052, which claimed priority of an earlier application filed 11 January 2002. A copy of the intentional application was transmitted on 17 July 2003 to the USPTO from the International Bureau. The thirty month (30) time period for paying the basic national fee in the United States of America expired at midnight on 11 July 2004.

On 09 July 2004, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee. No executed oath or declaration of the inventors accompanied the transmittal letter.

On 02 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, *inter alia*, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" and that the current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it: is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68. The Notice indicated that all of the items set forth above must be submitted must be submitted within two months from date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 28 July 2005, applicants filed an executed declaration but it was missing the signature of one of the inventors.

On 16 August 2005, the USPTO mailed a NOTIFICATION OF DEFECTIVE RESPONSE (PCT/DO/EO/916) indicating that the signature of the first inventor Johan Olof Anders Robertsson is missing.

On 18 April 2006, a Notification of Abandonment was mailed to applicants. It stated that the applicant has failed to properly respond to the notification of Missing Requirements (Form PCT/DO/EO/905), mailed 02 June 2005 within the time period set therein.

On 01 May 2006, applicants filed the instant petition accompanied, *inter alia*, with an executed declaration.

DISCUSSION

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that:

“The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

A review of the petition reveals that applicants have not complied with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed and a tickler sheet for 02 June 2005. Tanis's statement and the copy of 10/501,271 docket report by themselves are insufficient to establish failure to receive the Office communication without any further corroborating evidence, e.g., a log showing the mailed received during the time period the office communication would have been received or a tickler sheet for 16 September 2005. In other words, to establish a showing nonreceipt of the Notification of Defective Response would require, at a minimum, a copy of docket showing the entries of all incoming USPTO correspondence received within the time period that the Office action would have been received and a copy of the docket report showing all replies docketed for a date of one month from the mail date of the nonreceived Notice of Defective Response. Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned- application at this time is not appropriate.

CONCLUSION

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The above-captioned application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within TWO (2) MONTHS from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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